IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.612 OF 2006

In

NOTICE OF MOTION NO.3709 OF 2003

In

SUIT NO.3957 OF 2003

Rupchand Rajmalji Jain (Sancheti) & Anr. : Appellants
(Orig.Defendant Nos.2&3)

V/s.

Maniben Kalyanji Gada & Ors. : Respondents
(Orig.Plaintiffs 1 to 5
and Defendants)

And

Court Receiver, High Court, Bombay. : Respondent

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Mrs.A.A.Agrawal with Mr.S.S.Jinsiwale i/b. Mr.S.S.Jinsiwale for the appellants.

Mr.Snehal Shah with Mr.K. Narayan i/b. M/s.Narayanan & Narayanan for respondent Nos.1 to 5.

Mr.S.A.Katkade for respondent No.6.

Mr.D.V.Deokar, 1st Asstt. to Court Receiver (present).

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : AUGUST 22, 2006.

P.C.

1. At the outset, the counsel for respondent Nos.1 to 5 submitted that respondent No.1 is dead and her name be deleted from the array of parties for the purposes of this appeal.

2. We order accordingly.

3. Admit.

4. Mr.Snehal Shah for respondent Nos.1 to 5 and Mr.Katkade for respondent No.6 waive service. Nominee of Court Receiver is present and waives service for the Court Receiver.

5. Appeal is heard finally at this stage.

6. It is not in dispute before us that the present appellants (defendant Nos.2 & 3) had already undertaken that they would not alienate, dispose of or create any third party rights in respect of two flats, viz., flat Nos.A-303 and B-302. In the suit for specific performance of the contract, on the face of the undertaking that has been given by Defendant Nos.2 and 3, we find hardly any justification for the appointment of the Court Receiver in

respect of the aforesaid two flats. Defendant Nos.2 and 3 are purchasers of the two flats, though according to the plaintiffs the said purchase is collusive, from defendant No.1. The Agreement of Sale is between the plaintiffs and defendant No.1. Until the suit for specific performance is decreed in favour of the plaintiffs, the plaintiffs cannot be said to have acquired any right, title or interest in the property agreed to be sold. There is no allegation of dissipation of the property. For all these reasons, we are satisfied that the order passed by the learned Motion Judge appointing the Court Receiver in respect of the aforesaid two flats is unjustified.

7. We, accordingly, allow the appeal and set aside the order dated 16.3.2006. The Court Receiver is discharged. The Court Receiver is directed to refund the amount of Rs.5,000/- to the plaintiffs without any delay. Defendant Nos.2 and 3 (appellants) are directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) with the office of the Court Receiver towards his costs within two weeks from today. The undertaking given by defendant Nos.2 and 3 not to alienate, dispose of or create any third party rights whatsoever in respect of flat Nos.A-303 and B-302 shall continue to operate until the disposal of the suit. Defendant Nos.2 and 3 shall continue to pay the outgoings of the two flats and keep the said flats in good condition.

R.M. LODHA, J.

S.A. BOBDE, J.